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November 17, 2020

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*Commonwealth of Virginia, ex rel. State Corporation Commission Ex parte: In the matter of  
adopting new rules of the State Corporation Commission governing exemptions for large general  
services customers under § 56-585-1 A 5 c of the Code of Virginia*  
Case No. PUR-2020-00172

Dear Mr. Logan:

Please find enclosed for electronic filing in the above-captioned proceeding the  
*Comments of Virginia Electric and Power Company on the Draft Large General Services  
Customer Exemption Rules.*

Please do not hesitate to call if you have any questions in regard to the enclosed.

Highest regards,

/s/ Lisa R. Crabtree

Lisa R. Crabtree

Enclosures

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, <i>ex rel.</i>	)	
	)	
STATE CORPORATION COMMISSION	)	
	)	Case No. PUR-2020-00172
<i>Ex parte:</i> In the matter of adopting new rules of the	)	
State Corporation Commission governing exemptions	)	
for large general services customers under	)	
§ 56-585-1 A 5 c of the Code of Virginia	)	

**COMMENTS OF VIRGINIA ELECTRIC AND POWER COMPANY  
ON THE DRAFT LARGE GENERAL SERVICES CUSTOMER EXEMPTION RULES**

Pursuant to Ordering Paragraph (8) of the State Corporation Commission of Virginia's (the "Commission") September 30, 2020 Order for Notice and Comment ("Order") issued in this proceeding, Virginia Electric and Power Company ("Dominion Energy Virginia" or the "Company") respectfully submits these comments ("Comments") in response to the draft proposed rules prepared by the Commission's Staff ("Staff") by which large general services ("LGS") customers may be exempted from participation in and cost recovery associated with utility-sponsored energy efficiency programs ("Proposed Rules").

**INTRODUCTION AND BACKGROUND**

During the 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly, also known as the Virginia Clean Economy Act ("VCEA"). The VCEA became effected on July 1, 2020, and amended Section 56-585.1 A 5 c ("Subsection A 5") of the Code of Virginia ("Va. Code"), among other things. Subsection A 5 requires the Commission to establish rules by which large general

services customers may be exempted from participation in energy efficiency programs.

According to the VCEA, the new rules are to be effective by June 30, 2021.<sup>1</sup>

According to Subsection A 5, a LGS customer “means a customer that has a verifiable history of having used more than one megawatt of demand from a single site.”<sup>2</sup> Moreover, “[a] utility shall not charge such LGS customer for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer’s premises if the customer provides, at the customer’s expense, equivalent energy efficiency equipment.”<sup>3</sup>

On September 30, 2020, the Commission issued an Order in the present proceeding that, among other things, set forth the Proposed Rules; set November 17, 2020, as the deadline to file written comments on the Proposed Rules; and directed Staff to file a report on or before December 17, 2020, concerning comments submitted.

Dominion Energy Virginia appreciates the opportunity to provide comments on the Proposed Rules and supports the efforts of Staff and all parties to this proceeding to develop a standardized process that will apply to the LGS customer exemption.

### **COMMENTS**

The Company generally supports the Proposed Rules with exception of the Company’s comments discussed herein. A redlined version of the Proposed Rules reflecting the Company’s comments and proposed amendments is provided in Attachment A.

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<sup>1</sup> *Id.*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

**20 VAC 5-350-10. Applicability and scope.**

The Proposed Rules should be amended such that a customer must have a verifiable history of using at least 1 megawatt (“MW”) of demand in at least three months within a consecutive twelve-month period, as opposed to one occurrence. Requiring a minimum of three occurrences will eliminate anomalies that could be caused by extreme weather or other external conditions. The Company’s suggested amendment is in alignment with how the Company determines which rate schedule a particular customer qualifies for (*i.e.*, GS-1, GS-2, GS-3, or GS-4).

Additionally, the 12-month period in which the demand exceeds 1 MW should also be required to be within the most recent three years of the customer’s electric service in order to have the qualification for LGS customer’s be relevant to their current operations. The Company believes this amendment is reasonable given that the Proposed Rules also reference customers that do not have three calendar years of usage, presumably giving relevance to this timeframe.

Lastly, the Company requests that word “contiguous” be added to the description of a “single site” in order to avoid ambiguity about certain geographic locations. Adding this descriptor will provide helpful clarity for all utilities striving to apply consistent review and treatment of notices of nonparticipation.

**20 VAC 5-350-20. Administrative procedures for notice to utility and Commission.**

The Proposed Rules currently appear to envision a rolling administrative process whereby LGS customers may submit notices of nonparticipation at any time between January 1 and March 1 of each calendar year, and the utility is responsible for processing and executing those exemptions within a 60-day window. Given that customers can submit notices at any point

during this two month timeframe, the Company would, in reality, be reviewing and verifying notices as early as January 1 to as late as May 1—about half the year.

Instead, the Company proposes a more structured process with firm dates to better enable utilities to manage workflow and monitor compliance deadlines. As reflected in Attachment A, the Company proposes to maintain the January 1 – March 1 timeframe for LGS customers to submit notices of nonparticipation. However, instead of requiring the utility to process these notices on a rolling basis, the Company proposes allowing utilities to have until June 1 of each year to take action on nonparticipation notices (*i.e.*, accept or reject with explanation). In addition, the Company recommends that all billing changes for nonparticipating LGS customers become effective on July 1 of the applicable calendar year – again, rather than having to administer billing changes on a rolling basis.

These administrative changes will help ensure that the exemption process runs as efficiently as possible and will avoid the need of a utility having to separately track each customer's individual notice based on the timing of receipt. The utility can also, from a workflow perspective, better prepare if all notices must be processed, and all billing changes must occur, within a precise window.

The Company notes that it provided notice to approximately 2,700 non-residential customers that may qualify for an exemption pursuant to Subsection A 5 based on prior demand usage. Given the number of potential LGS customers that may submit notices of nonparticipation, the work required to track and process such notices could be significant.

The Company further proposes that the Proposed Rules provide some guidance on how electric utilities should handle the notices of nonparticipation received after the March 1 deadline. The Company recommends that any notices received after the March 1 deadline

should not receive an exemption from Subsection A 5. Those customers who submit notices after the March 1 deadline should be required to submit another notice the following year. Having customers resubmit their notices may prove to be the easiest procedure for customers and utilities to manage and provides a clear level of expectation for all involved parties.

Lastly, the Company suggests including a reasonable timeframe for notification of material changes by nonparticipating customers. The Company believes that instructing LGS customers to provide the proper notice within 60 days of the material change is a helpful addition within the Proposed Rules.

**20 VAC 5-350-30. Standard criteria for notice to utility.**

With respect to the information that must be contained within notices of nonparticipation, the Company requests the Proposed Rules be amended to make clear that all applicable utility account numbers must be provided within the notice. This amendment is particularly relevant for those customers that may seek to aggregate multiple accounts within a single site in order to reach the 1 MW demand threshold.

The Company further suggests that certain changes to the Proposed Rules regarding annual reporting requirements should be made. First, the Company proposes that the Proposed Rules should be updated to require that each exempt LGS customer should provide the utility—in addition to the Commission Staff—with yearly reports describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is in effect. Second, the annual reports should include the status of the measures and operational changes the customer included in its notice of nonparticipation. These

amendments will better allow the Commission and utility to track the status of nonparticipating LGS customers and the energy efficiency savings being achieved.

**20VAC5-350-40. Dispute resolution.**

The Company supports the Proposed Rule for 20 VAC 5-350-40, and does not have any proposed edits. The Proposed Rule properly lays out the necessary procedure to handle dispute resolution when dealing with disputes arising out of this LGS exemption process. Additionally, this Proposed Rule tracks, verbatim, the rule originally adopted by the Commission in its first Order Promulgating Regulations for proposed LGS exemption rules.<sup>4</sup>

**20 VAC 5-350-50. Waiver and enforcement.**

The Company also supports the Proposed Rule for 20 VAC 5-350-50, and does not have any proposed edits. This Proposed Rule also tracks, verbatim, the rule originally adopted by the Commission in its first Order Promulgating Regulations for proposed LGS exemption rules.<sup>5</sup>

**MINOR SUGGESTED EDITS**

Finally, the Company suggests minor edits and word changes to the Proposed Rules.

Attachment A reflects these proposed revisions.

- In **Section 20 A**, the Company believes that the word “certify” should be substituted for “demonstrate.” The Proposed Rules do not require a demonstration that the customer implemented an energy efficiency program but rather a certification/attestation of implementing such a program. The use of the word “certify” also tracks the language in Subsection A 5. Therefore, the Company proposes that the Commission approve the following sentence for the Proposed Rules: “A customer is eligible for an exemption from any rate adjustment clause approved for a utility by the State Corporation Commission (commission) pursuant to § 56-585.1 A 5 c, if any customer can *certify* that it has implemented an energy

<sup>4</sup> *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules of the State Corporation Commission governing exemptions for Large General Services Customers under § 56-585-1 A 5 c of the Code of Virginia*, Case No. PUE-2009-00071, Order Promulgating Regulations at Appendix A.

<sup>5</sup> *Id.*

efficiency program (program), at the customer's expense, that has produced measured and verified results within the prior five years."

- In **Section 20 B**, the Company believes the a cross reference to the earlier described criteria should replace a reference to usage in excess of one megawatt, so that the sentence reads, "The utility shall accept the exemption request if the customer meets the criteria for a large general service customer set forth in the previous section (20 VAC 5-350-10) ~~has a highest measured usage in excess of one megawatt~~ and has submitted the information required by 20 VAC 5-350-30." The Company also notes that use the word "demand" instead of "usage," is more appropriate, if the original sentence is used.
- Also in **Section 20B**, the Company proposes that acceptance or rejection of a LGS customer's notice of nonparticipation should be provided to the Division of Public Utility Regulation rather than filed.
- In **Section 30 A**, the Company proposes that the phrase "single site" be substituted for the phrase "metering point." The Company believes that the use of "single site" better tracks the language of Subsection A 5 as references to the term "meter" were removed from Subsection A 5 according to the VCEA. The Company proposes that the new phrase should state the following: "and the location of the specific facility and *single site* for which any such exemption is being sought."

### CONCLUSION

The Company appreciates the opportunity to share these comments with the Commission regarding the Proposed Rules, and respectfully urges the Commission to include revisions consistent with these comments, as shown in Attachment A, when adopting new rules governing exemptions for large general services customers under § 56-585-1 A 5 c of the Code of Virginia.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

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November 17, 2020

**STATE CORPORATION COMMISSION**  
**Rules Governing Exemption for Large General Services Customers**  
**Under § 56-585.1 A 5 c of the Code of Virginia**

**CHAPTER 350**

**RULES GOVERNING EXEMPTIONS FOR LARGE GENERAL SERVICES  
CUSTOMERS**

**UNDER § 56-585.1 A 5 c OF THE CODE OF VIRGINIA**

**20 VAC 5-350-10. Applicability and scope.**

This chapter is promulgated pursuant to the provisions of § 56-585.1 A 5 c of the Virginia Electric Utility Regulation Act. Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. This chapter is specifically applicable to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c, that have verifiable histories of using more than one megawatt of monthly demand from a contiguous single site at least three times within a consecutive 12-month period. The 12-month period for which demand exceeds one megawatt shall be within the most recent three years of the customer's electric service. As used in this chapter, a customer comprises all of the individual electric utility accounts owned by a single entity, located on a contiguous single site, and that are engaged in the same business. This chapter is also applicable to customers with highest measured demands from a single site of more than one megawatt in any single month if such customers do not have three calendar years of history. A customer is eligible for an exemption from any rate adjustment clause approved

for a utility by the State Corporation Commission (commission) pursuant to § 56-585.1 A 5 c, if any customer can ~~demonstrate~~ certify that it has implemented an energy efficiency program (program), at the customer's expense, that has produced measured and verified results within the prior five years.

**20 VAC 5-350-20. Administrative procedures for notice to utility and Commission.**

A. Any customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the year in which an exemption is sought. The notice of nonparticipation shall be concurrently filed by the customer with the commission's Division of Public Utility Regulation. Notices provided after March 1 will not be accepted during that calendar year and must be resubmitted for the next period being sought.

B. Upon receipt of the notice of nonparticipation, a utility shall, ~~within 60 days thereof~~ on or before June 1, verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. The utility shall accept the exemption request if the customer meets the criteria for a large general service customer set forth in the previous section (20 VAC 5-350-10) ~~has a highest measured usage in excess of one megawatt~~ and has submitted the information required by 20 VAC 5-350-30. In the event the utility fails to notify the customer of any deficiency in its notice of nonparticipation ~~within the 60-day period~~ by June 1, the exemption shall be deemed accepted by the utility. The utility's acceptance or denial of any exemption request shall

concurrently be sent to the customer and ~~filed~~ provided by the utility with ~~to~~ the commission's Division of Public Utility Regulation.

C. Once a utility has accepted a customer's exemption request, that customer shall be exempt from any rate adjustment clause approved for the utility by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia, beginning July 1 ~~with the billing month~~ following the date of acceptance of the exemption request and continuing throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation. A customer shall notify the utility and the commission if the conditions of the customer's notice of nonparticipation change in any material respect within 60 days of the change.

D. Each notice of nonparticipation which contains confidential information shall be treated in accordance with the commission's Rules of Practice and Procedure (5 VAC 5-20-170).

**20 VAC 5-350-30. Standard criteria for notice to utility.**

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and all applicable utility account number(s), and the location of the specific facility and single site ~~metering point~~ for which any such exemption is being sought.

B. The notice of nonparticipation shall also contain an affidavit signed by the customer's president, corporate secretary, or other officer of the customer concerning each program. Such affidavit shall attest to the validity of information submitted in support of the customer's notice of nonparticipation.

C. The notice of nonparticipation shall describe the energy efficiency savings achieved in the prior five years from its investment in its program and the specific measures undertaken to achieve those savings.

D. The notice of nonparticipation shall include information concerning any anticipated change in operations that may affect achieved or expected energy efficiency savings, including the life expectancy of the energy efficiency measures undertaken.

E. To qualify for the exemption, each customer shall have measurable and verifiable energy efficiency savings in the prior five years consistent with § 56-585.1 A 5 c of the Code of Virginia. Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter, shall subsequently furnish yearly reports to the utility and the commission's Division of Public Utility Regulation describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is in effect. The annual reports shall include the status of energy efficiency measures and operational changes included in the customer's notice of nonparticipation. Such reports shall be filed on or about March 1 of the year following such customer's filing of its notice of nonparticipation, with such March 1 filings continuing thereafter throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation.

F. Each notice of nonparticipation shall also include a measurement and verification plan conforming to the protocol set forth in the definition of "measured and verified" as provided in § 56-576 of the Code of Virginia.

G. Not later than December 31 of each year, each utility shall notify its customers of the percentage energy efficiency reductions expected to be achieved by the utility's

energy efficiency programs for which the commission has approved rate adjustment clauses pursuant to § 56-585.1 A 5 c of the Code of Virginia.

**20VAC5-350-40. Dispute resolution.**

A. Customers and utilities shall seek to resolve all disputes arising out of the exemption process established under this chapter pursuant to the provisions of this section.

B. In the event of any such dispute, either party shall furnish the other a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make good faith efforts to resolve the dispute informally within 10 business days of the receipt of such notice.

C. If any such dispute has not been resolved within 10 business days following receipt of the notice, either party may seek resolution assistance from the commission's Division of Public Utility Regulation where such matter will be treated as an informal complaint under the commission's Rules of Practice and Procedure (5 VAC 5-20).

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service for the purpose of assisting the parties in (i) resolving the dispute, or (ii) selecting an appropriate dispute resolution method or mechanism (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. In any such dispute resolution proceeding, each party shall conduct all negotiations in good faith and shall be responsible for 1/2 of any charges for the dispute resolution provider, but each party shall

bear its own legal fees and other costs incurred as a result of the dispute resolution process.

D. If any such dispute remains unresolved following the parties' good faith exercise of the dispute resolution alternatives set forth in this section, either party may file a formal complaint with the commission pursuant to the commission's Rules of Practice and Procedure (5 VAC 5-20).

**20 VAC 5-350-50. Waiver and enforcement.**

A. The commission may waive any or all parts of this chapter for good cause shown.

B. The commission on its own motion may initiate steps necessary to verify a nonparticipating customer's achievement of energy efficiency if the commission has a body of evidence that the nonparticipating customer has knowingly misrepresented its energy efficiency achievement. Such proceedings shall be governed by the commission's Rules of Practice and Procedure (5 VAC 5-20).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of November 2020, a true and accurate copy of the foregoing filed in Case No. PUR-2020-00172 was hand delivered, electronically mailed, and/or mailed first class postage pre-paid to the following:

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